

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,863

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision of the Department of Social Welfare denying her request for a good cause waiver from cooperating with the collection of child support.

FINDINGS OF FACT

1. The petitioner is an ANFC recipient who is the mother of a five year old boy. She became an ANFC recipient in April of 1991, after her relationship with the boy's father ended.
2. At the time of her application, she requested a waiver of the requirement that she cooperate with the Department in obtaining child support from his father. For some unknown reason, the Department did not respond to her request nor require her to cooperate for almost three years.
3. In March of 1994, the Department notified the petitioner that she would have to cooperate or receive a waiver to continue receiving her portion of the ANFC grant. On April 14, 1994, the petitioner filed a request for a waiver accompanied by a letter from the women's crisis center where she stayed in 1991 and a mental health services agency where she, her child, and the child's father went for counseling. Copies of those two reports are attached hereto as Exhibits One and Two and are incorporated herein by reference.
4. On April 25, 1994, the petitioner's application was reviewed by a supervisor at the central office in Waterbury who denied the waiver request because "No documentation [was] provided that would support her contention although there 'may' be some."
5. In her application and at hearing the following facts came out: The petitioner lived with her son's father for a couple of years before he was born, during which time their relationship was relatively smooth. After the boy was born in 1989, his father became subject to emotional outbursts, often when he had been drinking too much, during which he verbally and physically abused the petitioner. On about

four occasions, he slapped or bruised her and on one occasion chased her with a piece of wood although he did not hit her with it after their son intervened. The police were not called in to assist her and the petitioner did not seek medical care for any injuries. Although her physical injuries were not serious his physical abuse and threats of abuse placed her in great fear for her safety. When her boyfriend became angry, she generally left the scene of their home. On the last occasion when he became abusive, she left their home, went to a battered women's shelter<sup>(1)</sup> and never returned to her boyfriend's home. After about a month at the shelter, she established her own home.

6. The petitioner's relationship with her son's father has completely ended but he continues to maintain a relationship with his son and takes him for visitation twice weekly. About a year after their separation, the petitioner and her son's father went for counseling for six months in order to work out ways to continue co-parenting their son. He has not paid any child support during this time and she has not asked him to pay although he is employed and makes a good salary.

7. Since their separation three years ago, the petitioner has not been physically abused by her ex-boyfriend although he has verbally threatened her on a couple of occasions. The petitioner fears that bringing up the subject of child support will cause him to lose his temper and possibly lead to further abusive behavior. Even more than that, however, she fears that he will decide to break off his relationship with their son which she has nurtured through a good deal of her own effort. The petitioner believes this will occur because the petitioner became angry and abandoned his two children from an earlier marriage (who are both nearly grown now) because their mother pressed him for child support. However, there is no evidence that he abused his first wife when she asked for child support.

### ORDER

The Department's decision is affirmed.

### REASONS

Any person who receives ANFC automatically assigns his/her rights to support to the Department and is expected as a condition of eligibility to cooperate in establishing paternity and collecting child support benefits unless s/he has good cause for failing to do so. W.A.M. § 2331.32.

Good cause is defined in the Department's regulations, in pertinent part, as follows:

To show that cooperation may be "against the best interests of the child" the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the mother or caretaker relative which is so serious it reduces her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify finding of good cause.

W.A.M. § 2331.33

These regulations closely track those found in the federal regulations at 45 C.F.R. § 232.42. A determination of reasonable anticipation of harm is a factual decision which must be made on "a case by case basis on the weight, sufficiency and quality of the gathered evidence. The final decision requires a subjective judgement on the part of the hearing examiner." Bootes v. Cmmr. of Penn. Dept. of Public Welfare, 439 A.2d 883, 885 (1982). When the criteria for this exception were set by the Department of Health and Human Services, (at that time known as the Department of Health, Education and Welfare), it was expected that it would be an exception used in those few extraordinary circumstances where the parent or child faced a risk so real that it would outweigh the emotional, physical and financial benefits of the child's receiving parental support. See 43 Red. Reg. 2176, (January 16, 1978).

In discussing the evidence necessary to support a request for waiver, the Department's regulation includes the following:

Whenever the waiver request is based in whole or in part upon the anticipation of emotional harm to the child, the mother or the caretaker relative, the present emotional state and health history of the individual subject to emotional harm must be considered as well as the extent of involvement of the child in the establishment of paternity or support enforcement activity to be undertaken. A finding of good cause for emotional harm may only be based upon a demonstration of an emotional impairment that substantially affects the individual's functioning.

W.A.M. § 2331.34(2)

The petitioner claims in her request that she should be exempted because her cooperation may result in serious physical or emotional harm to herself which would reduce her ability to care for her child. On the issue of emotional harm, the petitioner has put forth no evidence of the type detailed showing that she is likely to experience an emotional impairment that would substantially affect her functioning. If she is to prevail in her request, she must show that she is likely to be seriously physically harmed so that her ability to care for her child was reduced.

The evidence is not of a nature, weight and quality from which it can be concluded that such harm is likely to occur. While it is true as the mental health counselor advises that the petitioner is probably the best judge of her own safety, other financial interests at stake for her child, dictate that her judgment must be subjected to some scrutiny to see whether it is reasonable in light of the facts.

The facts here show that in spite of continued contact and interim provocations, the petitioner's ex-boyfriend has not physically abused her since they separated over three years ago. The petitioner's own testimony indicated that whatever physical abuse did occur in the past derived most of its impact from the fear it prompted in her rather than the actual physical harm done to her. (The petitioner could get a waiver if she is debilitated due to fear, but she has not put on any evidence that this is the case.) Her son's father has also agreed to take part in counseling and has moved out of the petitioner's personal life. It is also clear from the evidence that although he may have abused his ex-wife (from his first marriage) during their marriage, he did not return to assault her when she asked for child support for their two children. Although there is certainly a possibility that he could seriously physically abuse the petitioner, it cannot be said that what has happened in the past makes this a likely event.

While the petitioner does fear and dislike angry confrontations with her ex-boyfriend, her testimony indicated that her primary concern in this matter is the impact the pursuit of child support would have on

the relationship between her son and his father. (Although she did not claim nor put on evidence of emotional abuse of her son.) Based on his past behavior, it is very possible that he would walk away from his child if he felt pressured to pay support. However, maintenance of a relationship between the child and parent is not a factor which the regulations consider when determining whether financial support should be pursued. The boy's father cannot avoid his obligation to pay support through his emotional blackmail of his own child. The petitioner has not met the criteria set forth for avoiding cooperation in the collection of support from the child's father.

1. The report offered by the Women's Crisis center indicated that she was at a shelter for three years and one month. However, the other evidence, including the petitioner's own testimony, indicates that one month was the actual length of stay. The report apparently contains a typographical error in the year (1994, instead of 1991).